

# DEED OF WELLINGTON CIRCUS TRUST

This Deed made this 23rd day of December 2005

## BETWEEN

Eileen McNaughton  
("the Settlor")

## AND

Thomas Beauchamp, Andrea Knox, Eileen McNaughton, Jenny  
Ritchie, Jez Weston  
("The Trustees")

## BACKGROUND

- A. The Settlor wishes to create a Charitable Trust for the benefit of the community generally and specifically to carry out the aims listed below.
- B. The Settlor has paid the sum of ten dollars ("the trust fund") to the Trustees to be held upon the trusts set out in this Deed.

## ACKNOWLEDGEMENT BY THE TRUSTEES

1. The Trustees acknowledge that on the signing of this Deed they will hold the Trust fund on Trust for the purposes set out in the objects of this deed.
2. The Trust fund will also include all money and property received or acquired by the Trustees for the purposes of these trusts at any time after the signing of this Deed.
3. The Trustees agree to immediately apply to be incorporated as a Board under the Charitable Trusts Act 1957 on the basis of the objects, powers and rules set out below in this Deed.
4. The Trustees will have the powers set out below in this Trust Deed.
5. The Trustees will follow the rules set out below in this Trust Deed.

## NAME

1. The name of the Board established for the objects and powers set out below is  
**WELLINGTON CIRCUS TRUST**

## **AIMS**

- 1) To foster a thriving circus recreational and performance community in Wellington. For the purposes of this Trust, circus is defined as those performing arts commonly associated with the circus, which are primarily based on human physical performance.
- 2) To provide community facilities, equipment and infrastructure for classes, rehearsal and performance that are affordable to circus groups. Priority will be given to activities dependent on specialised equipment and facilities, such as aerials, over activities for which other facilities are readily available.
- 3) To foster, encourage, and facilitate relevant community classes, workshops and training opportunities
- 4) To do any other act within New Zealand that advances the above charitable aims.

## **POWERS**

The Board will have the following powers within New Zealand:

- a) To purchase, lease, hire or otherwise acquire any real or personal property.
- b) To sell, let, mortgage, hire out or otherwise dispose of or deal with any of the property or assets of the Charitable Trust.
- c) To construct, maintain or alter any buildings or property.
- d) To borrow, raise, lend or invest money on such terms as may be thought fit.
- e) To insure any trust assets for such amounts and on such conditions as the Trustees determine.
- f) To enter into any contract or arrangement with any individual, local or central government entity, or corporate or non-profit body
- g) To pay all or any of the expenses incurred in establishing and running the Board.
- h) To employ or engage staff, advisors or other people whether or not they are Trustees, and to pay their wages, salaries and/or their expenses on terms suitable to the Board
- i) To alter the powers and rules of the Board provided that no alteration or addition detracts from the charitable purposes of the Board.
- j) To open and operate trading and savings bank accounts
- k) To affiliate and co-operate with any other organisation, whether established in New Zealand or elsewhere, having objectives similar to the objectives of the Trust
- l) To do all such other things that in the opinion of the Board will further the Trusts aims and powers provided that nothing will be done to detract from the charitable purposes of the Board, or conflict with any condition imposed by the Department of Inland Revenue.

## **RULES**

The rules of the Board will be as follows:

## **1. Constitution of the Board**

- 1.1 The Board will have between 5 and 9 members.
- 1.2 The Trustees named in this deed will be the original Board Members and their appointment will commence from the date of this deed.
- 1.3 The Board will appoint new members to the Board according to these rules and on their appointment those new members will become Trustees.
- 1.4 The Board member will hold office until the next Annual General Meeting of the Board unless prior to this date he or she:
  - i) resigns;
  - ii) is unable to perform his or her duties;
  - iii) does not attend 3 consecutive Board meetings without adequate explanation;
  - iv) dies;
  - v) is removed from the Board according to clause 1.5.
- 1.5 A Board member may be removed from the Board by a vote of at least three quarters of the Board members at a General Meeting. The Board member concerned must be given:
  - i) at least 14 days notice of the proposed removal;
  - ii) the reasons for the proposed removal;
  - iii) an opportunity to reply at the meeting considering his/her removal.
- 1.6 Any Board member may resign from the Board giving notice in writing to the Board and his/her resignation will take effect from the date the notice is received by the Board. The Board member shall cease to be a trustee with effect from the same day.
- 1.7 Every appointment, retirement, resignation and removal of a trustee will be formally documented by the Board.

## **2. Powers of the Board**

- 2.1 The Board members will be responsible for the management of all the affairs of the Trust and may exercise all the powers given to it by this deed.

## **3. Trust Patrons**

- 3.1 A Trust patron or patrons may be elected by ordinary resolution at an Annual General Meeting or Special General Meeting and shall hold this position until the next Annual General Meeting when she/he shall be eligible for re-election.
- 3.2 If elected, she/he shall not be required to pay entry fees or annual subscriptions but shall be entitled to attend Trust functions and meetings. A patron who is not a trustee shall not have voting rights.
- 3.3 A Trustee, if elected patron, should be eligible for appointment to any other position in the Trust.

### **3. Board Meetings**

- 3.1 The Board will hold at least two meetings in every year and one of these meetings will be the Annual General Meeting which is to be held not more than 15 months following the previous Annual General Meeting.
- 3.2 At the first meeting of the Board and at every Annual General Meeting the Board will appoint the following officers:
  1. a Convenor who will convene all Board meetings
  2. a Secretary who will carry out the functions allocated to the secretary in these rules
  3. a Treasurer who will control the funds of the board
- 3.3 If at any time an Office holder ceases to be a Board member, the Board may appoint another member to that office prior to the next Annual General Meeting
- 3.4 In addition to the appointment of office holders the Annual General Meeting will carry out the following tasks:
  - i) Receive and consider the Annual Report;
  - ii) Receive, consider and adopt the Financial Accounts;
  - iii) Appoint an Auditor or Accountant who may or may not be a Board Member, if the Board so elects to appoint such Auditor or Accountant;
  - iv) Consider any other general business.
- 3.5 Meetings may be open to the public especially people interested in being involved in the running of workshops or with performance ideas

### **4. Notice of Board Meetings**

4.1 Notice of all Board meetings will be given orally or in writing to each Board Member at least 14 days prior to the meeting. However, if all board members agree a board meeting may be called at any agreed time.

4.2 Notice of the Annual General Meeting shall be given orally or in writing to all Trustees at least 14 days ahead of the meeting.

## 5. **The Running of Board Meetings**

5.1 **Quorum** - The quorum for all Board Meetings will be more than half of all Board Members.

5.2 **Decision Making** - The Trust's preferred model for decision-making is a consensus model. This means that at any meetings of the Trust, its Board or committees the members will endeavour to arrive at a decision by debating the issues and possible courses of action.

5.3 **Making decisions over two meetings** - Where the Trust is making a decision over a significant issue the meeting participants, the Chairperson or any Board member can request that the decision be deferred until the next meeting to allow meeting participants more time for gathering further information or longer reflection on the ramifications of a decision.

5.4 **Voting**- Where the consensus model of decision-making is unsuccessful or cannot be applied, decisions can be reached by voting.

(i) The Convenor of the meeting is empowered to call a vote to resolve an issue which can not negotiated; The voting will be one person, one vote.

(ii) A simple majority of votes will be sufficient to pass a resolution.

(iii) Where the vote is even the Chairperson shall have the casting vote.

5.5 **Voting by Proxy** - In each twelve month term, a Board Member can vote by proxy for one Board meeting providing:

(i) the procedures for proxy voting are met

(ii) the quorum requirements for Board meetings are met.

5.6 **Sub-committees** - The Board may from time to time appoint two or more of its members to form a sub-committee. The sub-committee may co-opt other people who are not board members.

5.7 **Conflict of Interest** - Where a conflict of interest, personal or financial, for a Board Member is identified, the Board may require the Board member concerned to:

- (i) speak to the motion or
- (ii) abstain from any discussion on any motion before the Board; or
- (iii) withdraw from the meeting for the period of any discussion by the Board.

5.8 Where such a conflict of interest arises the Board Members concerned may not vote on any motion put before the Board

## **6. Minute Book**

6.1 All proceedings of Board Meetings will be recorded in a minute book

## **7. Common Seal**

7.1 The common seal of the Board will be held in the custody of the Board and will be used only when authorised by a resolution of the Board. When the seal is used it will be signed by two Board members appointed to sign that document by the Board.

## **8. Control of Funds**

8.1 The Board will ensure proper books of accounts are administered and annual accounts are prepared to be audited

8.2 All funds received by or on behalf of the Board shall be paid into the Board's bank account.

8.3 All cheques and withdrawal slips drawn on the Board's account will be signed by two Board members appointed resolution of the Board.

8.4 The income and property of the Board shall be applied solely to further the objects of the Board. No income or property shall be paid or transferred directly or indirectly to members of the Board. This will not prevent payment of reasonable remuneration or expenses to any member, officer or employee for any services performed by them for the Trust.

8.5 A Board member may charge for any services carried out by him or her where the Board would have had to pay for that service if it was carried out by somebody

who was not a member. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).

8.6 The provisions and effect of this clause shall not be removed from this document and shall be included and implied in any document replacing this document.

## **9. Alterations And Additions To The Rules**

9.1 The Board may alter, add to or cancel any rules at a Board meeting provided that:

- i) written notice of the proposed change is included in the notice calling the meeting;
- ii) the meeting may amend the proposed change;
- iii) a two thirds majority of the Board members present at the meeting agree to the change;
- iv) no alteration, addition or cancellation will be made to these rules that is in conflict with:
  - a) the aims of the Trust;
  - b) the charitable nature of the Trust;
  - c) the Charitable Trust Act 1957;
  - d) the conditions of any exemption granted by the Department of Inland Revenue.

## **10 Mediation and Arbitration**

10.1 Any dispute arising out of or relating to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties.

- a) mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. \
- b) the other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances.
- c) The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator.
- d) The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.

10.2 The mediation shall be terminated by:

- a) The signing of a settlement agreement by the parties; or

- b) Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
- c) Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
- d) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

10.3 If the mediation should be terminated as provided in 10.2 any dispute or difference arising out of or in connection with this deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

10.4 Parties will be responsible for their own mediation costs.

## **11. Indemnity for Trustees**

11.1 No Trustee of these presents shall be liable for any loss other than loss attributable to his or her personal dishonesty or his or her wilful commission of an act known to be a breach of trust. Furthermore, no Trustee shall be liable in respect of the acts or omissions of any co-trustee and shall not be bound to take any proceedings against any co-trustee for any breach of trust committed or alleged to have been committed by such co-trustee.

11.2 The Trustees shall from time to time and at all times be indemnified by and out of the trust property from and against all costs, charges, losses, damages, and expenses sustained or incurred by them or in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party.

## **12. Liquidation**

12.1 The Trust may be wound up if at a General Meeting the Board passes a resolution to do so and appoints one or more liquidators to wind up the Trust's affairs.

12.2 This resolution must be confirmed at a subsequent General Meeting which has been called for that specific purpose and is held not earlier than 42 days after the original resolution was passed.

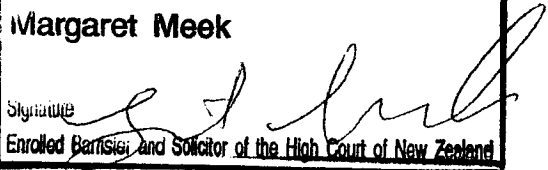
12.3 Any surplus assets shall be distributed to other approved charitable trusts with similar charitable aims within New Zealand and shall be determined by the Board at the subsequent General Meeting held to confirm the resolution to wind up the Trust.

SIGNED by )  
as Settlor in the )  
presence of: )

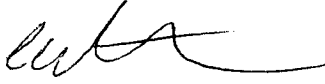


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Witness Margaret Meek  
Occupation Policy Analyst  
Address Wellington


**Margaret Meek**  
Signature   
Enrolled Barrister and Solicitor of the High Court of New Zealand

SIGNED by )  
as Trustee in the )  
presence of: )



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*John Ritchie*

Witness ..... *Margaret Meek*  
Occupation..... *Policy Analyst*  
Address ..... *Wellington*

**Margaret Meek**  
Signature *[Signature]*  
Enrolled Barrister and Solicitor of the High Court of New Zealand

SIGNED by )  
as Trustee in the )  
presence of: )

*Thomas Beachcroft*

Witness ..... *Margaret Meek*  
Occupation..... *Policy Analyst*  
Address ..... *Wellington*

**Margaret Meek**  
Signature *[Signature]*  
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